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MGM Resorts International Operations, Inc.*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MGM RESORTS INTERNATIONAL
OPERATIONS, INC., a Nevada corporation,

Plaintiff

v.

TYLT, INC., a Delaware corporation,

Defendant

TYLT, INC. a Delaware corporation,

Counterclaimant

vs.

MGM RESORTS INTERNATIONAL
OPERATIONS, INC., a Nevada corporation,

Counter-Defendant

CASE NO. 2:20-cv-02250-^{CDS}~~JAD~~-VCF

**STIPULATION AND PROPOSED
ORDER TO:**

1. UNSEAL ECF NOS. 72, 79

**2. FILE REDACTED VERSIONS OF ECF
NOS. 70, 73-76, 79-80**

**3. REMAIN SEALED ECF NOS. 70, 73-
76, 79-80**

Plaintiff MGM Resorts International Operations, Inc. ("MGM") and Defendant Tylt, Inc. ("Tylt") (collectively, the "Parties"), by and through their undersigned counsel of record, submit
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1 this Stipulation pursuant to the Court's Order [ECF No. 84] related to their respective Motions to
 2 File Under Seal certain filings in this matter and states as follows:

3 1. On August 24, 2023, the Court held a hearing on MGM's Motion for Summary
 4 Judgment or Partial Summary Judgment [ECF No. 70] (the "MSJ"). At the hearing, the Court
 5 ordered the parties to meet and confer to determine whether ECF Nos. 70, 72, 73, 74, 75, 76, 79,
 6 and 80 need to be sealed as previously moved for by the parties. *See* ECF No. 84. These court
 7 filings consist of:

- 8 a. ECF No. 70: MGM's MSJ with Appendices of Exhibits (Volumes I and II).
- 9 b. ECF No. 72: Tytl's Notice of Evidentiary Objections to MSJ.
- 10 c. ECF No. 73: Tytl's Response to Motion to MGM's MSJ (the "MSJ Response").
- 11 d. ECF No. 74: Tytl's Declaration in support of MSJ Response.
- 12 e. ECF No. 75: Tytl's Declaration of Rami Rostami in support of MSJ Response.
- 13 f. ECF No. 76: Tytl's Declaration of Larry Steven in support of MSJ Response.
- 14 g. ECF No. 79: MGM's Response to Tytl's Notice of Evidentiary Objections to
 15 MSJ.
- 16 h. ECF No. 80: MGM's Reply and Objection to MSJ Response with exhibits (the
 17 "Reply Brief").

18 2. Due to the commercially sensitive nature of the documents and information being
 19 exchanged by the parties during this lawsuit, as well as the confidentiality provision within the
 20 parties' Corporate Sponsorship Agreement (the contract at issue in this lawsuit), the parties
 21 entered into a Stipulated Protective Order [ECF No. 21] and had submitted the above-mentioned
 22 filings by filing respective Motions to File Under Seal.

23 3. Pursuant to the Order [ECF No. 84], the Court ordered that: (1) the parties should
 24 file a stipulation if they could agree to fully or partially unseal the court filings, and/or (2) if
 25 parties do not agree, then a motion should be filed and the particular party needs to meet the
 26 "compelling reason" standard articulated below on why the document needs to remain sealed. At
 27 the hearing, the Court stated that if the parties agreed to re-file redacted copies, a motion would
 28 not be necessary.

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4. While there exists a strong presumption in favor of access to court records and documents, *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003), this general right to public documents is not absolute. *Nixon v. Warner Commc'ns*, 435 U.S. 589, 598 (1978). Pursuant to *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (2006), parties seeking an order to seal court records must articulate "compelling reasons" supported by factual findings that outweigh the general history of access and the public policies favoring disclosure. "In general, 'compelling reasons' sufficient to outweigh the public's interest in disclosure and justify sealing court records exist when such 'court files might have become a vehicle for improper purposes,' such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets." *Id.* at 1179.

5. "Commercially sensitive information that could hurt" a party's "competitive standing unless they are sealed" qualifies as a compelling reason. *Snap Lock Industries, Inc. v. Swisstrax Corporation*, No. 2:17-cv-02742-RFB-BNW, 2021 WL 3082561 (D. Nev. July 21, 2021); *Selling Source, LLC v. Red River Ventures*, 2011 WL 1630338 * 6 (D. Nev. Apr. 29, 2011) ("Where the material includes information about proprietary business operations, a company's business model or agreements with clients, there are compelling reasons to seal the material because possible infringement of trade secrets outweighs the general public interest in understanding the judicial process."); *see also Nixon*, 435 U.S. at 598 ("business information that might harm a litigant's competitive standing" is a compelling reason to seal); *Ctr. For Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (harm to party's competitive standing is a "compelling reason" sufficient to seal business information).

6. On August 31, 2023, counsel for the parties held a lengthy meet and confer telephone conference to address in good faith the Court's Order [ECF No. 84] and the commercially sensitive information that warrants protection from disclosure.

7. During the meet and confer, the parties agreed that the following filings may be **unsealed** and will not be re-filed with redactions by the parties: **ECF Nos. 72, 79.**

8. During the meet and confer, the parties agreed to protect the general public's interest in understanding the judicial process that the following filings, upon the Court's approval

of this Stipulation, **shall be re-filed with redactions**. The current, unredacted filings shall remain filed under seal to protect commercially sensitive information that other businesses could utilize to gain an advantage against Tylt and MGM if they were privy to the confidential information:

a. **ECF Nos. 70 Redacted:**

- a. Redactions to portions of the confidential, commercially sensitive and proprietary Corporate Sponsorship Agreement (Exhibit 1(A));
- b. Minimal redactions to the portions of Gerard Casale deposition transcript (Exhibit 3) which relate to the confidential business dealings, operations, and specific amounts/terms of the Corporate Sponsorship Agreement;
- c. Minimal redactions to the portions of Daniel Curzon deposition transcript (Exhibit 4) which relate to the confidential business dealings, operations, and specific amounts/terms under the Corporate Sponsorship Agreement;
- d. Redactions to confidential term sheet e-mails (Exhibit 5) and terms sheets exchanged between the parties which are confidential business dealings, negotiations and/or operations;
- e. One redaction to MGM's 30(b)(6) witness deposition transcript (Exhibit 6) which relates to the specific confidential terms and product orders between Tylt and MGM;
- f. Minimal redactions to the portions of Shaun Gogna's deposition transcript (Exhibit 7) which relate to the sensitive business dealings, business operations, and specific amounts/terms under the Corporate Sponsorship Agreement;
- g. Redactions to confidential e-mails attaching the finalized term sheet between Tylt and MGM (Exhibit 9) which relate to sensitive business dealings and confidential negotiations of the agreement at issue;

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- h. Redactions to drafts of redlined Corporate Sponsorship Agreement (Exhibit 10) which are sensitive business dealings and confidential negotiations for the agreement at issue;
- i. Redactions to Corporate Sponsorship Agreement and related e-mails (Exhibit 11) which are sensitive business dealings and confidential negotiations for the agreement at issue;
- j. Minimal redactions to the cited portions of Rami Rostami deposition transcript (Exhibit 12) related to confidential business dealings, business operations, and specific amounts/obligations under the Corporate Sponsorship Agreement;
- k. Redactions to the cited portions of Aimee Wenske's deposition transcript (Exhibit 13) related to other MGM sponsorship deals/negotiations, confidential business dealings, and the operations of MGM;
- l. Redactions to Tylt Spreadsheets (Exhibit 14) identifying the specific amount of product ordered by MGM, and pricing, which constitute sensitive and confidential commercial information;
- m. Redactions to e-mails (Exhibit 15) which contain the specific amount of product ordered by MGM Grand which constitute sensitive business information, dealings, negotiations and operations of the parties;
- n. Redactions to a spreadsheet identifying Tylt's hospitality credit provided by MGM (Exhibit 16) which constitutes sensitive and confidential business information;
- o. Redactions to confidential e-mails (Exhibit 17) discussing sensitive business information, dealings, negotiations and operations of MGM;
- p. Redactions to e-mails (Exhibit 18) which contain the specific amount of product ordered by MGM Grand which constitute sensitive and confidential business information, dealings, negotiations and operations of MGM;

q. Redactions of data on Tytl produced spreadsheets (Exhibit 23) that purportedly identifies Tytl's sales, quantity of product ordered by MGM, and prices, which constitute sensitive and confidential business information.

b. **ECF No. 73 Redacted:** Minimal redactions to parts of Tytl's MSJ Response purportedly addressing MGM's operations, internal workings, negotiations, retail/commercial opportunities, and amount of sales, which constitute sensitive and confidential business information, dealings, and operations of MGM.

c. **ECF No. 74 Redacted:** Redactions to the portions of Rami Rostami deposition transcript not cited by Tytl in its Response to the MSJ which relate to the confidential business dealings, MGM's operations, and specific amounts/terms of the Corporate Sponsorship Agreement. The remainder of the document is unredacted.

d. **ECF No. 75 Redacted:**

a. Redactions to the portions of Rami Rostami's Declaration purportedly addressing MGM's operations and amount of sales, which constitute sensitive business information, dealings, and operations;

b. Redactions to e-mail (Exhibit A) discussing MGM's operations and negotiations, which constitute sensitive business information, dealings, and operation;

c. Redactions to portions of the confidential and proprietary Corporate Sponsorship Agreement (part of Exhibit A);

d. Redactions to Tytl produced spreadsheets (Exhibit B) to data that purportedly identifies Tytl's sales, quantity of product ordered by MGM and prices which constitute sensitive business information.

e. **ECF No. 76 Redacted:** Redactions to Lary Londre Expert Report (Exhibit A), which relies heavily on, and directly quotes from, confidential e-mails and deposition testimony, purportedly addressing MGM's operations, internal

workings, strategy, negotiations, retail/commercial opportunities, other unrelated business partners/vendors of MGM's and amount of product sales, which constitute sensitive business information, dealings, and operations.

f. **ECF No. 80 Redacted:**

- a. Redactions to the Expert Report of Professor Gary Frazier (Exhibit 2) related to the confidential and sensitive business dealings and operations of MGM and Tytl¹;
- b. Redactions to parts of the attached portions of Rami Rostami's Deposition Transcript (Exhibit 3) related to the confidential and sensitive business dealings and operations;
- c. Redactions to parts of the spreadsheets accompany Rami Rostami's Deposition Transcript (Exhibit 3) that set forth quantities and costs for Tytl products provided to MGM, which are commercially sensitive and confidential.

9. Again, to protect the general public's interest in understanding the judicial process, the parties have stipulated to re-file ECF Nos. 70, 73, 74, 75, 76 and 80 with redactions as set forth above. The above redactions relate to information about proprietary business operations, agreements with partners/vendors, confidential contract negotiations and purchasing needs in the highly competitive gaming and mobile charging industry which might harm the parties competitive standing. *Nixon*, 435 U.S. at 598. As a result, these justifications meet the "compelling reasons" standard to seal the material because it outweighs the general public's interest in understanding the judicial process under the circumstances.

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¹ As explained in the Reply Brief [ECF No. 80], MGM submitted Professor Frazier's Rebuttal Report not for the substance of the report or the truth of the matters asserted therein, but to establish that TYLT is aware that MGM is contesting Tytl's expert's opinions. Thus, the redacted material does not benefit the public at all.

10. **ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED** between the parties for the Court to: (a) unseal ECF Nos. 72 and 79; (b) grant the parties leave to re-file with redactions ECF Nos. 70, 73, 74, 75, 76 and 80; and (c) preserve and keep filed under seal the un-redacted versions of ECF Nos. 70, 73, 74, 75, 76 and 80.

DATED this 5th day of September, 2023.

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/s/ Andrew B. Goodman

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IT IS SO ORDERED.

United States District Judge

Dated: September 6, 2023

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